

# ARKANSAS SUPREME COURT

No. CR 08-885

DAVID DANIELS  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered    October 30, 2008

PRO SE MOTIONS FOR  
APPOINTMENT OF COUNSEL AND  
FOR CONTINUANCE OR  
SUSPENSION OF APPELLANT'S  
BRIEF'S DUE DATE [CIRCUIT  
COURT OF BENTON COUNTY, CR  
2005-902, HON. DAVID S. CLINGER,  
JUDGE]

APPEAL DISMISSED; MOTIONS  
MOOT.

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## PER CURIAM

A jury found appellant David Daniels guilty of theft of property and sentenced him as a habitual offender to 168 months' imprisonment. The Arkansas Court of Appeals affirmed. *Daniels v. State*, CACR 07-592 (Ark. App. Mar. 5, 2008). The mandate issued on March 25, 2008. Appellant filed in the trial court a pro se petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1 on June 9, 2008. The trial court denied the petition on the basis that it lacked jurisdiction because appellant's petition was not timely filed. Appellant has lodged an appeal of that order in this court. He now brings a pro se motion for appointment of counsel on appeal, and a motion for continuance or suspension of his brief's due date in which he requests an extension of time to file appellant's brief.

We need not consider the merits of appellant's motions because it is clear that he cannot prevail on appeal. An appeal of the denial of postconviction relief will not be permitted to go

forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam).

When a criminal conviction is appealed, Arkansas Rule of Criminal Procedure 37.2(c) mandates that the petition for postconviction relief be filed within sixty days of the date the mandate issued. In the instant case, the sixtieth day following the issuance of the mandate was May 24, 2008, a Saturday before a holiday. Under the calculation required by Arkansas Rule of Criminal Procedure 1.4, appellant's petition was due to be filed no later than May 27, 2008. Therefore the petition filed on June 9, 2008, was not timely.

The time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition. *Womack v. State*, 368 Ark. 341, 245 S.W.3d 154 (2006) (per curiam). Because it is clear that the trial court could not consider the petition, appellant cannot prevail. We accordingly dismiss the appeal and appellant's motions are moot.

Appeal dismissed; motions moot.